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09/29/2003

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EXAMINER

MORAN, KATHERINE M

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,994

Applicant(s)

ALTMAN, JASON S.

Examiner

Katherine M Moran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the body member of the pad is aperture free when the specification recites that the pad includes air gaps serving as capillaries so as to increase the absorbency and total retention of the pad. Any item intended to absorb liquid will inherently include apertures.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Craig (U.S. 4,122,847). Craig '847 discloses the invention as claimed. Craig teaches a protective covering 10 for the scalp, facial skin, eyes, mouth, and nostrils, comprising a flexible pad 12 having a substantially planar surface with first and second sides, first and second ends 13,17, and adhesive 26 disposed on a portion of the first side (Figures 1 and 4). At least a portion of the protective covering is non-transparent. The embodiment of Figure 2 recites that the pad comprises a

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flexible, sponge-like material adapted to absorb chemicals or other liquids. Pad 12 is structurally adapted for attachment to a forehead area of a user such that at least a portion of the adhesive member contacts the forehead of the user (col.2, lines 19-21). The pad could be secured to a substantial portion of an upper part of the forehead area of a user, including adjacent to where the forehead area meets the user's hairline. The pad is aperture free to the degree that Applicant has disclosed his pad as being aperture free. Pad 12 includes minute openings found in sponge-like or foamed materials. An embodiment of the pad shown in Figure 3 illustrates a top edge profiled to follow an average hairline. First and second flange extensions 14,15 (Figure 4) are monolithically formed with the pad and are disposed at, or adjacent to, the pad's first and second ends, respectively. The flange extensions include second and third adhesive members adhesive members 26, which are extensions of the central adhesive portion.

Response to Arguments

5. Applicant's arguments filed 12/2/02, with regard to claims 11-20, have been fully considered but they are not persuasive. Applicant argues that Craig fails to teach attaching the shield to a substantial portion of the user's forehead, including the area adjacent to where the user's forehead meets the user's hairline. Claims 11-20 do not recite a method of attaching the shield/pad, only that the shield/pad is adapted for attachment to a substantial portion of a forehead area of a user, including adjacent to where the forehead area meets the user's hairline. Craig's pad could be positioned to cover a substantial portion of a forehead area of a user, including adjacent to the hairline. Figure 4 shows the shield/pad disposed on a substantial portion of the wearer's forehead and depending upon the size of the wearer's face/forehead

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region, the pad could cover an area adjacent to where the forehead area meets the user's hairline.

The configuration of an average hairline varies widely from person to person.

Allowable Subject Matter

6. Claims 1-10 are allowed.

Conclusion

7. Any inquiry concerning this communication or earlier communications should be directed to Examiner Katherine Moran at (703) 305-0452. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (703) 305-1025. The official fax number for the organization where this application is assigned is (703) 872-9302. The after final fax number for this organization where this application is assigned is (703) 872-9303.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist at (703) 308-1148.

Kmm

September 24, 2003



Katherine Moran

Examiner, AU 3765